

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SAVERIO L. ANNUNZIATA and U.S. POSTAL SERVICE,
POST OFFICE, New Haven, Conn.

*Docket No. 97-1041; Submitted on the Record;
Issued May 14, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

This case has previously been before the Board on nine occasions. On the most recent prior appeal, the Board, by decision and order dated October 27, 1995, found that appellant had not established that he was disabled after December 14, 1981 due to an employment-related emotional condition.¹

By letter dated February 26, 1996, appellant requested reconsideration contending that the Office used an incorrect date of injury in adjudicating his claim. Appellant submitted a copy of an October 19, 1994 settlement agreement of his suit against the employing establishment for discrimination based on handicaps. The employing establishment agreed to pay appellant a lump sum of \$15,750.00 to recompense him for all costs of litigation and attorney fees; appellant agreed not to seek reinstatement with the employing establishment for the remainder of his life and to release the employing establishment from all claims under his suit and the underlying Equal Employment Opportunity cases.

By decision dated May 23, 1996, the Office found that the evidence in support of appellant's request for reconsideration was cumulative or immaterial and not sufficient to warrant review of its prior decisions.

By letter dated June 3, 1996, appellant requested reconsideration contending that the Office used an incorrect date of injury in adjudicating his claim. By decision dated August 29, 1996, the Office found that that the evidence in support of appellant's request for reconsideration was repetitious and immaterial and not sufficient to warrant review of its prior decisions.

¹ Docket No. 94-510.

By letter dated September 11, 1996, appellant requested reconsideration contending that the evidence showed that he was disabled after December 14, 1981 due to his employment-related condition and that the medical evidence was of no bearing on his claim. By decision dated December 4, 1996, the Office found that the evidence in support of appellant's request for reconsideration was repetitious and immaterial and not sufficient to warrant review of its prior decisions.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

"The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease, or increase the compensation awarded; or

(2) award compensation previously refused or discontinued."

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a point of law or fact not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.² Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.³

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

The only evidence appellant submitted that was not previously considered by the Office was the October 19, 1994 settlement agreement of his suit for discrimination based on handicaps. This evidence is not relevant or pertinent to the issue of whether appellant was disabled after December 14, 1981 due to his employment-related emotional condition. The contentions he presented in his requests for reconsideration do not show that the Office erroneously applied or interpreted a point of law. They also do not advance a point of law or fact not previously considered by the Office, as the Office and Board have previously considered these same spurious points.

The decisions of the Office of Workers' Compensation Programs dated December 4, August 29 and May 23, 1996 are affirmed.

² *Eugene F. Butler*, 36 ECAB 393 (1984).

³ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

Dated, Washington, D.C.
May 14, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member